

**CAPITAL GRANT AGREEMENT BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA, AND
CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY**

This capital grant agreement ("Agreement"), is made and entered into on this ___ day of ___, 2008 ("Effective Date") by and between the CITY OF SANTA CLARA, CALIFORNIA, a chartered California municipal corporation ("City"), and CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY, a California non-profit corporation ("Contractor"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties".

AGREEMENT PROVISIONS

The Parties agree as follows:

1. FUNDING AND APPROPRIATION

- A. Pursuant to the provisions of Title I of the Housing and Community Development Act of 1974, as amended, City has received Community Development Block Grant funds ("CDBG") from the Department of Housing and Urban Development ("HUD") as an entitlement. City has appropriated an amount not to exceed EIGHTY THOUSAND DOLLARS (\$80,000), to be given to Contractor to be utilized during the time period between July 1, 2008 and June 30, 2009 ("Utilization Period") for the purpose of meeting the goals and objectives outlined in Exhibit A, titled, "Scope of Affordable Housing Project" ("Project"), attached and incorporated by this reference, to benefit low and moderate income City of Santa Clara residents.

2. DEFINITIONS

Whenever used in this Agreement and its attachments, the terms below, when initially capitalized, shall have the following meanings:

- A. Annual Income: Shall mean the income of all household members as defined in the Code of Federal Regulations, 24 CFR 813.102.
- B. CDBG: Shall mean Federal Regulations 24 CFR Part 570, which govern the Community Development Block Grant program. This definition shall include all HUD memos and other correspondence explaining or otherwise commenting on the CDBG Program.
- C. OMB: Shall mean the Federal Office of Management and Budget.
- D. Original Agreement: Shall mean the "Agreement by and Between the City of Santa Clara,

California, and Charities Housing Development" (as assigned), dated December 14, 1993. In cases of conflict between this Agreement and the Original Agreement, the terms of the Original Agreement shall prevail.

- E. Project Property: Shall mean all buildings and grounds located at 2606 Newhall Street, Santa Clara, California (APN # 303-01-22).
- F. Tenant/Client: Shall mean low and moderate income households residing in Project Property on the date of final payment by City to Contractor under this Agreement.

3. PROJECT COORDINATION

- A. City: The Housing and Community Services Division Manager or his/her designee, shall be the Program Manager for City and shall render overall supervision of the progress and performance of this Agreement by City. All services to be performed by City shall be under the overall direction of the Program Manager.
- B. Contractor: Contractor shall assign a single Project Director who shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Project Director, Contractor shall notify City immediately of such occurrence. Project Director and Contractor staff will cooperate with City's Program Manager relating to the Project, areas of concern, and the impact of Project on residents of City.
- C. Notices: All notices or other correspondence required or contemplated by this Agreement shall be sent to the Parties at the following addresses:

CITY: Housing and Community Services Division Manager
 City of Santa Clara
 1500 Civic Center Drive
 Santa Clara, California 95050

CONTRACTOR: Executive Director
 Charities Housing Development
 465 South First Street
 San Jose, CA 95113

3. OBLIGATION OF CONTRACTOR

- A. Organization of Contractor: Contractor shall:
 - 1) Provide to City in writing, prior to selection of any subcontractor under this Agreement, or thereafter through the end of the Utilization Period, within thirty (30) days of a change in status of any of the following:

- a) A copy of Articles of Incorporation under the laws of the State of California;
 - b) A copy of current Bylaws of Contractor;
 - c) Verification and documentation of Internal Revenue Service nonprofit status under Title 26, Section 501(c) of the Internal Revenue Code of 1986;
 - d) Verification and documentation of State of California Franchise Tax Board tax exempt status under Section 23701(d), of the California Revenue and Taxation Code;
 - e) Names and addresses of current Board of Directors of Contractor;
 - f) A copy of the adopted personnel policies and procedures including an Affirmative Action Plan if staff exceeds fifteen (15) employees;
 - g) An organizational chart and staffing profile; and
 - h) Any other documents required by HUD to verify compliance with CDBG.
- 2) Abide by the conflict of interest provisions in 24 CFR 84.42, 24 CFR 85.36 and OMB Circular A-110. In all cases not governed by these documents, 24 CFR 92.356 and 24 CFR 570.611 shall apply. These rules apply to any person currently being compensated by the Contractor for services rendered to it within the previous twelve (12) months, whether as a full or part time employee, officer, independent contractor or otherwise. Any such persons who have exercised or exercise any decision-making functions or responsibilities with respect to City's administration of CDBG or gain inside information with regard to that process, are prohibited from obtaining any financial interest or benefit for themselves or those with whom they have family or business ties during their tenure with Contractor and for one year thereafter.
 - 3) Include on the Board of Directors representation from a broad cross section of the community, including: those with expertise and interest in the Contractor's services, representatives from community organizations interested in Contractor's services, and users of Contractor's services.
 - 4) Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters or to instruct negotiators.
 - 5) Keep minutes, approved by the Board of Directors, of all regular and special meetings.
 - 6) Encourage public participation in planning and implementing services provided under this Agreement.
 - 7) Utilize minority and/or female owned businesses, vendors, suppliers, and contractors to the maximum extent feasible, for items funded under this Agreement, in accordance with City policy as set forth in the Minority Female Business Enterprise Statement and Procedural Guide available through the City's Program Manager.

B. Project Performance of Contractor: During the Utilization Period, Contractor shall:

- 1) Submit to City all documentation required by City to assure compliance with requirements of the Project as described in Exhibit A and Exhibit B titled, "Budget and Basis for Reimbursement," attached and incorporated by this reference;
- 2) Submit to City by July 31, 2009, an annual report that summarizes the number of Clients Served, including their annual income, household size, race/ethnic heritage, and whether they are a senior, disabled, or female head of household family.
- 3) Maintain all required insurance coverage as specified in Exhibit C, titled "Insurance Requirements", attached and incorporated by this reference;
- 4) Maintain the appearance of Project Property consistent with surrounding properties;
- 5) Include an acknowledgement of City funding and support on all appropriate Project publicity and publications using words to the effect that services are funded by the City of Santa Clara; and,
- 6) Implement any changes required by City, HUD, or CDBG, to maintain compliance with CDBG requirements and any other applicable statutes or regulations. City and Contractor will seek remedies to address any changes that impact the financial viability of the Project.

C. Fiscal Responsibilities of Contractor: Contractor shall:

- 1) Appoint and submit the name of a Fiscal Officer who shall be responsible for the financial and accounting activities of the Contractor, including the receipt and disbursement of Contractor funds;
- 2) Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds;
- 3) Document all costs by maintaining complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, and/or other official documentation evidencing in proper detail the nature and propriety of all charges;
- 4) Perform an independent fiscal audit at least every year, in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed and funds granted and expended relating to this Agreement. The costs for such audits shall be at Contractor's expense, unless otherwise provided for in this Agreement. Copies of the completed audits must be provided to the City; and
- 5) Assure that all accounts and documentation of fiscal activities shall be consistent with the requirements of Exhibit B.

D. Records, Reports and Audits of Contractor

- 1) Contractor shall comply with all applicable federal Uniform Administrative Requirements as delineated 570.502 and 92.505.
- 2) Establishment and Maintenance of Records: Contractor shall maintain records, including but not limited to books, financial records, supporting documents, statistical records, personnel, property and all other pertinent Records sufficient to reflect properly (a) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and (b) all other matters covered by this Agreement.
- 3) Preservation of Records: Contractor shall preserve and make available its records:
 - a) Until the expiration of five (5) years following the end of the Utilization Period or the completion of the activity that produced the record, whichever is earlier;
 - b) For any longer period, if required by applicable law; or
 - c) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.
- 4) Examination of Records and Facilities: At any time during normal business hours and as often as may be deemed necessary, with at least one working day notice by City, Contractor agrees that City, and/or any duly authorized representatives shall, until expiration of (a) five years after the conclusion of the Utilization Period, or (b) such longer period as may be prescribed, have access to and the right to examine its offices and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement, excepting those falling within the attorney-client privilege and those falling within the attorney work-product privilege, provided that in the event of a dispute regarding the applicability of the attorney work-product privilege to specific records, the Parties agree to submit the dispute to an impartial arbitrator agreeable to both Parties. Agreement regarding the arbitrator shall not be withheld unreasonably. Parties shall equally divide costs of such arbitration.

Contractor also agrees that the City, or any duly authorized representatives, have the right to audit, examine and make excerpts or transcripts of and from, such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to matters covered by this Agreement.

- 5) City Audits: The City may require an independent audit. Such audits may cover Project compliance as well as fiscal matters. Contractor will be notified in advance that an audit will be conducted. Contractor will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Cost of such audits will be borne by the City.

F. Non-Religious Activity: In addition to, and not in substitution for, other provisions of this

Agreement regarding the provision of services with funds, pursuant to Titles I & II of the Housing and Community Development Act, as amended, the Contractor:

- 1) Represents that it is not, or may not be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization; and,
- 2) Agrees that, in connection with such services:
 - a) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
 - b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
 - c) It will provide no inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this Agreement, and will only conduct such activities in a separate time or place;
 - d) It will exert no other religious influence in the provision of such services and participation in religious activities by beneficiaries shall be voluntary; and,
 - e) The funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Corporation and in which the public services are to be provided, provided that, minor repairs may be made if such repairs (1) are directly in a structure used exclusively for non-religious purposes, and (2) constitute in dollar terms only a minor portion of expenditure for the public services.

G. Compliance with Ethical Standards: As a condition precedent to entering into this Agreement, Contractor shall:

- 1) Read the attached Exhibit E, titled "Ethical Standards for Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California", attached and incorporated by this reference; and,
- 2) Execute the affidavit attached as Exhibit F, titled "Affidavit of Compliance with Ethical Standards [City of Santa Clara]", attached and incorporated by this reference.

5. CONTRACT COMPLIANCE

- A. Monitoring and Evaluation of Project: Evaluation of the Project performance shall be the mutual responsibility of both Parties. Contractor shall furnish all Client and service data, statements, records, information and reports necessary for Program Manager to monitor, review and evaluate the performance of Contractor with respect to the Project and its components. City shall have the right

to request the services of an outside agent to assist in any such evaluation. Such services shall be paid for by City.

B. Contract Noncompliance: With receipt by City of any information that evidences a failure or deficiency by Contractor to comply with any provision of this Agreement, the City shall have the right to require corrective action to enforce compliance with such provision. Corrective action shall be taken if any of the following, as examples only, occur:

- 1) If Contractor (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to City in connection with the Project;
- 2) If there is pending litigation with respect to the performance by Contractor of any of its duties or obligations under this Agreement that may materially jeopardize or adversely affect the undertaking of or the carrying out of the Project;
- 3) If Contractor shall have taken any action pertaining to the Project which requires City approval without having obtained such approval;
- 4) If Contractor is in material default under the provisions of this Agreement;
- 5) If Contractor makes improper use of CDBG funds;
- 6) If Contractor fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof; or,
- 7) If Contractor submits to City any reports which are incorrect or incomplete in any material respect.

C. Corrective Action: After all administrative remedies have been exhausted, City shall have the right to require the presence of any of Contractor's officers at any hearing or meeting called for the purpose of considering corrective action within seven (7) working days of issuing such notice. Contractor will be informed of and have an opportunity to participate fully in corrective action deliberations.

City shall forward to Contractor a set of specific corrective action recommendations relative to Project noncompliance and a timetable for implementing the specified corrective action recommendations; such timetable shall allow Contractor not less than seven (7) working days to comply with the specified corrective action recommendations. Following implementation of the corrective actions, Contractor shall forward to City, within the time specified by City, any documentary evidence required by City to verify that the corrective actions have been taken. In the event Contractor does not implement the corrective action recommendations in accordance with the corrective action timetable, City may: disallow all or part of the cost of the activity or action in noncompliance; provide notice of intent to terminate this Agreement as specified in Section 15; and/or take other remedies that may be legally available.

6. OBLIGATIONS OF CITY

A. Contract Compliance: City staff shall provide assistance to Contractor in connection with:

- 1) Obtaining conformity of the Project with the City's policies and procedures and all City codes, ordinances, directives and laws;
- 2) Obtaining conformity of Project with CDBG requirements; and,
- 3) Review of Agreement for compliance purposes and evaluating Project based on annual reports received from Contractor and on-site monitoring of Client and Project Property data.

B. Method of Payment: City shall pay the actual cost for rehabilitation of Project Property a total sum not to exceed EIGHTY THOUSAND DOLLARS (\$80,000). This sum shall be subject to repayment to City under conditions specified in Exhibit G, titled "Promissory Note Secured by Deed of Trust", attached and incorporated by this reference. This sum shall be secured as specified in Exhibit H, titled "Deed of Trust", attached and incorporated by this reference.

Irrespective of any other provisions of this Agreement, City funds would only be available after a National Environmental Protection Act review is satisfactorily completed and the funds released by HUD.

C. Utilization of Funds: Funds shall be paid by City under this Agreement shall only be for eligible expenses incurred during the Utilization Period. The Utilization Period of this Agreement shall begin on July 1, 2008 and terminate on June 30, 2009. At its sole prerogative, City may choose to extend the Utilization Period up to ninety (90) days.

D. Final Payment Request: City must receive all payment requests under this Agreement within thirty (30) days of the conclusion of the Utilization Period. City shall have no payment liability under this Agreement after that date, and City may reprogram any unspent amount of the capital grant without prior notice to Contractor.

7. PROJECT INCOME

A. All rents or other payments collected from Project Clients during the Utilization Period shall be retained by the Contractor. These rents shall be used to further program activities at Project Property.

B. All rents or other payments that are collected from Project Clients during the Utilization Period and that remain unspent at the conclusion of the Utilization Period shall be used by Contractor solely to further program activities at Project Property.

C. Rents received subsequent to the Utilization Period shall not be subject to this Agreement.

8. DISCLOSURE OF CONFIDENTIAL TENANT INFORMATION

To the extent allowed by law, City agrees to maintain the confidentiality of any information regarding Tenants or applicants for residency under this Project, or their immediate families, pursuant to this Agreement, which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Project through subcontracts.

9. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

- A. The relationship of Contractor to City is that of an independent contractor. Contractor has full rights to manage its employees and Tenants subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement shall be employees of Contractor and not employees of City in any respect. Contractor shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.
- B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written City approval.
- C. No subcontractor of Contractor will be recognized by City as having any employment relationship with the City.

10. COMPLIANCE WITH LAW

- A. Compliance: Contractor shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in Exhibit D, titled "Assurances", attached and incorporated by this reference.
- B. Assurances: Failure of Contractor, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve Contractor of its responsibility to adhere to same and Contractor herein acknowledges this responsibility. Contractor shall hold City, its City Council, officers, employees and boards and commissions harmless from Contractor's failure(s) to comply with any requirement imposed on Contractor by virtue of the utilization of City funds. Contractor shall reimburse City for any disallowed costs and/or penalties imposed on City because of Contractor's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

11. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

12. INTEGRATED DOCUMENT

This Agreement embodies the agreement between City and Contractor and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

13. HOLD HARMLESS

Contractor hereby releases and agrees to protect, defend, hold harmless and indemnify City, its City Council, its officers, employees and elected officials, boards and commissions, from and against all claims, injury, liability, loss, cost and expense, or damage, however same may be caused, including all cost and reasonable attorney's fees in providing the defense to any claim arising therefrom, for any loss of or damage to property (real and/or personal) or for personal injury to or death of any person or persons arising out of, occurring by reason of, or in any way connected with Contractor's Project activities, or in consequence thereof.

14. WHEN RIGHTS AND REMEDIES WAIVED

In no event shall any payment by City or any acceptance of payment by Contractor hereunder constitute or be construed to be a waiver by City or Contractor of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City or Contractor, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to City or Contractor with respect to such breach or default.

15. TERMINATION

A. Termination for Cause: City may terminate this Agreement for cause if:

- 1) Contractor fails to comply with material existing conditions of the Agreement; or,
- 2) Contractor refuses to accept any additional conditions that may be imposed by City or the Federal government; or,
- 3) Contractor fails to implement required corrective actions in a timely and sufficient fashion.

- B. Termination for Convenience: City or Contractor may terminate or suspend this Agreement in whole or in part when both Parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. Both Parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.
- C. Upon termination Contractor shall not incur new obligations and shall cancel as many outstanding obligations as possible;
- D. Termination does not impair the City's right to subsequently require repayment by Contractor for disallowed costs or other adjustments determined by audit findings.

16. MISCELLANEOUS PROVISIONS

- A. The Captions: The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.
- B. No Third Party Beneficiary: This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.
- C. Severability Clause: In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.
- D. No Pledging of City's Credit: Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.
- E. Venue: In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

Corporation Financial Disclosure Requirements: Contractor services to be rendered under the provisions of this Agreement are excluded from the requirement of filing a Financial Disclosure Statement by Title 2, California Code of Regulations, Section 18,700(2) (A) and (B).

The Parties to this Agreement hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date as set forth on page 1.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal Corporation

APPROVED AS TO FORM:

By: _____
HELENE LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

By: _____
ROD DIRIDON, JR.
City Clerk

Address:
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
FAX: (408) 241-6771

"CITY"

CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY
a non-profit California Corporation

By: _____
Name: Christopher Block
Title: Executive Director

Local Address:
465 South First Street
San Jose, CA 95113
Telephone: (408) 282-1133
FAX: (408) 282-1140

"CONTRACTOR"

Exhibit A

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION
SCOPE OF AFFORDABLE HOUSING PROJECT

1. **PURPOSE OF PROJECT**

Contractor shall implement this Agreement in accordance with the applicable provisions of Title I of the Housing and Community Development Act of 1974, as amended, the federal regulations as set forth in 24 CFR Part 570, written interpretations or requirements by the United States Department of Housing and Urban Development ("HUD"), and all other rules and regulations pertaining thereto. All these elements shall be collectively called "CDBG".

The purpose of this Project is to rehabilitate a forty two unit apartment complex, located at 2606 Newhall Street, Santa Clara, California ("Project Property"). The rehabilitation project will replace the heating systems in at least 33 of the units. The new heating units would be more energy efficient. In addition, a larger concrete pad would be laid for the central mailbox site. The current site is landscaped in such a way as to create an obstruction hazard for tenants in a wheelchair or walker.

2. **DEFINITION OF TERMS**

- A. **Income Limits**: The maximum Annual Income level for a Tenant is eighty percent (80%) of the area median income, adjusted for household size, as established by HUD. The basis for determining compliance is the tenants in residence as of the date of the final payment to Contractor under this Agreement

3. **ACTIVITIES TO BE PERFORMED**

- A. **Direct Services—Rehabilitation**: Contractor shall have full responsibility to procure and to monitor the performance of sub-contractors hired to undertake the rehabilitation of Project Property, subject to the following requirements:
- 1) Contractor or Contractor's representative shall describe its method of procuring sub-contractors. This procurement plan shall be subject to written approval by City.
 - 2) Contractor shall prepare a scope of work, describing the various development and construction activities to be undertaken. This scope of work shall be approved, in writing, by City, before any financial commitments to sub-contractors are entered into by Contractor.

- 3) Contractor shall develop bid/proposal documents for all sub-contractors. These documents shall be approved by the City, in writing, prior to public release.
- 4) Contractor shall obtain any and all required permits and plan approvals before undertaking any construction work.
- 5) This project is subject to federal and state prevailing wage requirements. All bid/proposal packets must include a notice that the project is funded by Community Development Block Grant funds, that Federal Labor Requirements, including Davis-Bacon prevailing wages apply to the project and a Wage Determination setting forth the prevailing wage decision for the project.

B. Reports and Submittals

- 1) By July 31, 2009, Contractor shall submit to City a list of all Tenants current as of June 30, 2009. This report shall be submitted on a form satisfactory to the City and shall include all information required under the Original Agreement plus the race and ethnicity of each Tenant.
- 2) At the completion of the Project, and prior to payment of retention by City, Contractor shall provide City all original documents submitted by sub-contractors to document compliance with prevailing wage requirements.
- 3) In order to comply with CDBG, HOME and other applicable federal, state, and local requirements, and to efficiently monitor compliance with this Agreement, City may require additional reporting elements from Contractor.

4. PROJECT PERFORMANCE STANDARDS

The timeline below constitutes the measurable goals by which Project performance will be evaluated.

Work Phase

Completion Date

Completion of Construction

June 30, 2009

Exhibit B

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION

BUDGET AND BASIS FOR REIMBURSEMENT

1. APPROPRIATION BUDGET

<u>COST CATEGORY</u>	<u>AMOUNT</u>
<u>Construction</u>	<u>\$ 80,000</u>
TOTAL BUDGET	\$ 80,000

- A. All subcontractors will be solicited through a procurement process reviewed and approved by City. Subcontractors, whose expenses will be reimbursed through this Agreement, are subject to approval by City.
- B. The appropriation of \$80,000 is provided to Contractor as a conditional grant, subject to the terms of a Promissory Note, substantially in the form set forth in Exhibit G. That Note will be secured by a Deed of Trust, substantially in the form set forth in Exhibit H.
- C. It is understood by the Parties that no residents will be permanently or temporarily displaced by the Project. However, Contractor assumes all financial liability for any relocation costs associated with residents at Project Property during the construction period. The maximum amount of these relocation costs shall be consistent with CDBG requirements.
- D. It is the understanding of the Parties that City funds would only be available after a National Environmental Protection Act review is satisfactorily completed and the funds released by HUD.
- E. It is the City's intention that Contractor maintain and operate the Project Property in a self-supporting manner. To this end, City shall be under no obligation to provide additional funds to maintain and operate the Project Property.

2. ACTUAL COSTS AND REIMBURSEMENT

- A. Actual Costs shall be based on the sub-contractors total cost bids, as agreed to by Contractor and reviewed and approved by City, for architectural/engineering services, project management and construction costs. Work change orders shall be clearly itemized and added to the total costs as soon as approved by Contractor.

- B. City will withhold ten percent (10%) of construction costs, as retention, from all requests for reimbursement of construction costs. Retention funds shall only be repaid after a Notice of Completion has been recorded for at least 35 days, no outstanding liens on Project Property remain, and all local federal and state requirements have been certified as complete.
- C. If any Tenants are found to be in non-compliance with the Income Limits specified in Exhibit A, the City's reimbursement payment will be reduced to a percentage corresponding to the number of units whose Tenants are in compliance.

3. CITY LOAN

- A. City provides funds to Contractor under this Agreement in the form of a secured loan. The terms of that loan are set forth in the Promissory Note Secured by Deed of Trust, included as Exhibit G of the Agreement.
- B. The Promissory Note evidencing the City Loan shall be secured by a Deed of Trust on the Project Property. A copy of that Deed of Trust is included in this Agreement as Exhibit H. This Deed of Trust and attached Promissory Note shall be recorded by City, in substantially the same form as the two exhibits. Contractor shall not place any new liens on the Project Property without the prior written consent of the City.

Exhibit C

CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY WESTWOOD AMBASSADOR REHABILITATION

Insurance Coverage Requirements

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY INSURANCE POLICY ("PL").

Policy for Contractor's Professional Consultants (Architects, Engineers, etc): This policy shall cover and protect City from all damages, liabilities and costs incurred as a result of the professional errors and omissions or malpractice of the professional consultants hired by Contractor as described in this Agreement. This policy shall include a coverage limit of at least One Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims. Such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter as respect to incidents that occur during the performance of this Agreement. Such Service Provider shall notify City if any annual aggregate of coverage is eroded by more than seventy five percent (75%) in any given year.

E. PROPERTY INSURANCE.

Property Insurance covering all real and personal (non-expendable) property leased or purchased in whole or in part with funds provided in this Agreement. Such insurance coverage shall include a standard course of construction converting to a policy of fire and hazard insurance with Contractor's loss payable endorsement in favor of the City, with endorsements of extended coverage, vandalism and malicious mischief. Coverage shall be

for the full replacement value of the improvements, according to building codes and ordinances in place at the time.

F. BLANKET FIDELITY BOND

A Blanket Fidelity Bond, covering all Contractor's officers, employees and agents, for loss of City grant funds caused by dishonesty, in an amount not less than the funds advanced pursuant to this Agreement, naming City as Loss Payee, as its interest may appear.

G. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Contractor and approved by City, in writing, before work is begun pursuant to this Agreement. At the option of City, Contractor shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

H. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance, which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

I. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

J. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

K. EVIDENCE OF COMPLIANCE

City of Santa Clara Housing & Community Services Division
c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951)766-2280; or
Fax: (951)766-2299

City of Santa Clara
Housing & Community Services Division
1500 Civic Center Drive
Santa Clara, CA 95050
Telephone: (408) 615-2490
Fax: (408) 248-3381

HOME Capital Grant Agreement, Exhibit C: CHARITIES HOUSING DEVELOPMENT, Westwood Ambassador Rehabilitation (7/18/2008).

Exhibit D

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION

Assurances

The Recipient of CDBG funds hereby assures and certifies compliance with the regulations, policies, guidelines and requirements (including, but not limited to, federal OMB Circulars No. A-87, A-102, A-110, and A-122), as they relate to the application, acceptance and use of Federal funds for this assisted project. Also the Contractor assures and certifies to the City that:

1. It possesses legal authority to make a grant submission and to execute a community housing project;
2. Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the corporation to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the submission of the final application and to provide such additional information as may be required;
3. The grant will be conducted and administered in compliance with:
 - a. Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d *et seq.*), as amended; and
 - b. Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 42 U.S.C. 3601 *et seq.*), as amended; and
 - c. Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383; U.S.C. 5301 *et seq.*), as amended; and
 - d. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112; 29 U.S.C. 794), as amended; and
 - e. The Age Discrimination Act of 1975 (Public Law 94-135; U.S.C. 6101), as amended.
4. It will affirmatively further fair housing.

///

Exhibit E

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION

**Ethical Standards for Contractors
Seeking to Enter into an Agreement with
The City of Santa Clara, California**

Termination of Agreement for Certain Acts.

A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) and false statement(s) or representation(s) with respect to this Agreement.
2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Contractor can be imputed to Contractor when

¹ For purposes of this Exhibit, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of the corporation.

² For purposes of this Exhibit, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

the conduct occurred in connection with the individual's performance of duties for or on behalf of Contractor, with Contractor's knowledge, approval or acquiescence, Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
2. If City determines that Contractor fails to submit information, or permits false information, which is required in order to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event Contractor, as an applicant or bidder, is ruled ineligible (debarred) to participate in a contract award process, or the Agreement is terminated pursuant to these provisions, Contractor may appeal City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City of its action. The matter will be heard within thirty (30) days of the filing the appeal request with the City Clerk. Contractor will have the burden of proof on the appeal. Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

///

///

///

///

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

Exhibit F

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION

Affidavit of Compliance with Ethical Standards
[City of Santa Clara]


I, Christopher Block, being first duly sworn, depose and say that I am the Executive Director [title or capacity] of Charities Housing Dev. Corp. [entity name] and I hereby state that I have read and understand the language, titled "Ethical Standards for Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California" (herein "Ethical Standards") set forth in Exhibit E. I have authority to make these representations on my own behalf and on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on the review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in Footnote #1 of Exhibit E (i.e., owner or co-owner of a sole proprietorship, general partner, etc.) has been convicted of any one or more of the crimes identified in Exhibit E within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Christopher Block

Contractor Legal Name



Signature

Executive Director

Title

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

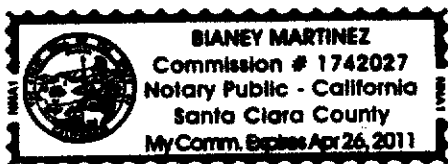
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara }

On 7/29/08 before me, Bianey Martinez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Christopher Block
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Exhibit G

**CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION**

Promissory Note Secured by Deed of Trust

1. Principal

For value received, **CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY**, a California non-profit corporation ("Contractor") promises to pay to the order of the **CITY OF SANTA CLARA**, a municipal corporation under the laws of the State of California ("City"), the sum of **EIGHTY THOUSAND AND 00/100 DOLLARS (\$80,000.00)**, or so much thereof as shall be advanced by City to Contractor, to the Director of Finance of the City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050, or such other place as City may from time to time designate, together with accrued interest from the date of this Note on the unpaid principal at the applicable rate as set forth in Paragraph 3. This Note is issued pursuant to and entitled to the benefits of that certain "CAPITAL GRANT AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA, dated _____, 2008 ("Contract") under the 2008 Community Development Block Grant Program ("CDBG"), pursuant to Title I of the Housing and Community Development Act of 1974, as amended. This Contract provides that Contractor is the recipient of certain CDBG funds, to rehabilitate forty three residential apartment units for low and moderate income households, located at 2606 Newhall Street, Santa Clara, California ("Project Property").

2. Payment Dates

Contractor shall pay the principal and interest provided for herein as follows:

- a. Principal and accumulated interest, and all other amounts payable by Contractor under the Loan Documents, shall be immediately due and payable, at the option of City, any time prior to February 16, 2024, if any one or more of the following Events of Default have occurred: (1) the sale, transfer, or other disposition by Contractor of any portion of Project Property without the prior written consent of City (excepting the leasing of individual residential units to qualified Tenants); or (2) a change in use by Contractor of the Project Property, without the prior written consent of the City; or (3) attachment of any liens on Project Property without the prior written consent of the City; or (4) failure to cure any non-compliance with CDBG regulations; or (5) failure to cure any other material noncompliance with the Contract and its exhibits.

- b. If an Event of Default has occurred, Contractor or its assignee shall make payment within ten working days of receipt of a written notice of an Event of Default.
- c. The entire principal and accumulated interest shall be considered paid in full if no Event of Default has occurred prior to February 16, 2024.

3. **Interest Rate and Accumulated Interest**

Absent an Event of Default hereunder, the outstanding principal amount of the City Loan shall bear simple interest at the rate of zero per cent (0%) per year, beginning on the date of this Note. The maximum interest accumulation shall be ZERO AND 00/100 DOLLARS (\$0.00) and the maximum amount owed the City shall be EIGHTY THOUSAND AND 00/100 DOLLARS (\$80,000.00). Notwithstanding anything to the contrary in this Promissory Note, outstanding interest on the principal shall be payable only to the extent of available sale or refinancing proceeds.

4. **Lawful Money**

Principal and interest are payable in lawful money of the United States of America.

5. **Applications of Payments; Late Charges**

- a. Any payments received by City pursuant to the terms of this Note shall be applied: first to sums other than principal and interest due to City pursuant to the Loan Documents; next to the payment of all interest accrued to the date of such payment; and the balance, if any, to the payment of principal.
- b. If any payment of interest and/or principal is not received by the City with five (5) business days following the due date thereof, then in addition to the remedies conferred upon the City pursuant to Section 7 hereof and the other Loan Documents, (1) a late charge of four percent (4%) of the amount due and unpaid will be added to the delinquent amount to compensate City for the expense of handling the delinquency, and (2) the amount due and unpaid, including the late charge, shall bear interest at the lesser of the higher annual rate which may lawfully be charged and collected under applicable law on the obligation evidenced by this Note or an annual rate which shall be four percent (4%) higher than the rate otherwise applicable to the delinquent amount, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of the City under any of the Loan Documents, Contractor shall indemnify the City against, and shall pay the City on demand, any expense or loss it may sustain or incur as the result of the failure by Contractor to pay, when due, any interest and/or principal, fees, or other amounts payable to City under the Loan Documents, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions. A certificate of the City setting forth the basis for the determination of the amounts necessary to indemnify the City in respect to such expenses or direct loss, submitted to Contractor by the City, shall be conclusive and binding for all purposes.

6. **Remedies**

Upon the occurrence of an Event of Default and the expiration of any applicable cure period thereafter, then, at the option of City, the entire balance of principal together with all accrued interest thereon, shall become immediately due and payable, without demand or notice. Upon the occurrence of an Event of Default (and so long as such Event of Default shall continue), the entire balance of principal together with all accrued interest shall bear interest, on the due date of the delinquent payment, at the Bank of America reference rate plus four percent (4%). No delay or omission on the part of City in exercising any right under the Loan Documents shall operate as a waiver of such right.

7. **Waiver**

Contractor, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and or dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability. The pleading of any statute of limitations as a defense to any demand against the Contractor is expressly waived by Contractor.

8. **Attorney's Fees**

If this Note is not paid when due or if any Event of Default occurs, Contractor promises to pay all reasonable attorneys fees and costs and expenses incurred by the City in connection with any such default or any other action or other proceeding brought to enforce any of the provisions of this Note. The City's right to such fees shall not be limited to or by its representation by staff counsel, and such representation shall be valued at customary and reasonable rates for private sector legal services.

9. **Relationship of Parties**

It is the intent of the Parties that the relationship evidenced by this Note shall be deemed to be one of debtor/creditor, and not of partnership or joint venture.

10. **Severability**

Every provision of this Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction, to be illegal or invalid for any reason whatsoever, such illegality shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

11. Interest Rate Limitation

It is the intent of Contractor and City in the execution of this Note and all other instruments securing this Note that the loan evidenced hereby be exempt from the restrictions of the usury laws of the State of California. The City and Contractor stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if the City shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of such maximum rate shall, at the option of the City, be credited to the payment of the sums due hereunder or returned to Contractor.

12. Amendments

This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the Parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

13. Number and Gender

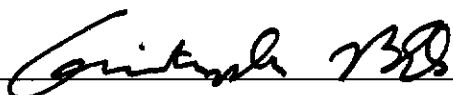
In this Note, the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa, if the context so requires.

14. Non-Recourse Note

This Note is a non-recourse note against Contractor

Promissory Note executed by Contractor on the date first hereinabove written.

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
a California Non-Profit Corporation

By: 

Name: Christopher Block

Title: Executive Director

Date: _____

Local Address:
465 South First Street
San Jose, CA 95113
Telephone: (408) 282-1133
FAX: (408) 282-1140

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Santa Clara

On

7/29/08

Date

before me,

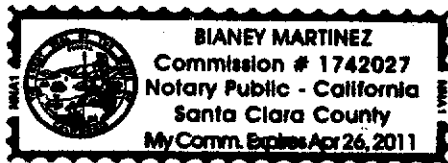
Bianey Martinez, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Christopher Block

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signature(s) on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Exhibit H

CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
WESTWOOD AMBASSADOR REHABILITATION

OFFICIAL BUSINESS

Document entitled to free
Recording per Government
Code Section 6103

Recording Requested by and
When Recorded Mail to:

THE CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050

SPACE ABOVE THIS LINE
FOR RECORDING USE

DEED OF TRUST

**Securing City Loan
With assignment of Rents**

This Deed of Trust is made this ____ day of ____, 2008, by and between **Charities Housing Development Corporation of Santa Clara, California**, a California non-profit corporation ("Contractor/Trustor"), and **The City of Santa Clara, California**, a chartered, California municipal corporation, organized and existing in the County of Santa Clara under and by virtue of the laws of the State of California ("City/Trustee/Beneficiary").

Contractor/Trustor grants, transfers and assigns to City/Trustee/Beneficiary in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession, all of its title and interest in that real property (herein "Project Property") in the City of Santa Clara, Santa Clara County, State of California, described in Attachment I, attached hereto and incorporated herein by reference, together with City's interest in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Project Property; and together with the following:

- A) The rents, issues and Profits thereof; and
- B) All buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot-

water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantles, cabinets, refrigerating equipment and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

- C) All building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and
- D) All plans, drawings, specifications, etc., and articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Project Property which are necessary to the completion and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are, or shall be attached to said building or buildings in any manner.

To have and to hold the property hereinbefore described (including the site and all appurtenances), all such property being referred to collectively herein as the "Project Property", to City, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

- 1) Payment of indebtedness of Contractor/Trustor to the City in the principal sum of EIGHTY THOUSAND AND 00/100 DOLLARS (\$80,000.00) or so much thereof as shall be advanced by City to Contractor/Trustor, ("City Loan"), evidenced by a promissory note of same date herewith between Contractor/Trustor and City, together with all sums due hereunder including interest and other charges;
- 2) The performance of each agreement of Contractor/Trustor in this Deed of Trust and the City Loan Promissory Note ("Note");
- 3) The performance of each agreement of Contractor/Trustor under that certain "CAPITAL GRANT AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND CHARITIES Housing Development Corporation of Santa Clara, dated _____, 2008 ("Contract"), to rehabilitate forty three residential apartment units for low income households, located at 2606 Newhall Street, Santa Clara, California, by and between Contractor/Trustor ("Contractor" therein) and City ("City" therein), on file in the Office of City;

- 4) All extensions, amendments, modifications or renewals of the Contract and Promissory Note, however evidenced, and additional advances evidenced by a note reciting that it is secured hereby.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, CONTRACTOR/
TRUSTOR COVENANTS AND AGREES:**

1. That will pay the City Loan at the time and in the manner provided in the Note;
2. That it will not permit or suffer the use of any of the Project Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed;
3. That the Note and the Contract, including attached exhibits, are incorporated herein and made a part of this Deed of Trust, or upon violation of the covenants contained in the Contract, City, at its option, may declare the whole of the indebtedness secured hereby to be due and payable, subject to all applicable notice and cure periods;
4. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to City for the purpose of discharging the debt hereby secured. Permission is hereby given to Contractor/Trustor so long as no default exists hereunder, to collect such rents, profits and income, as specified in the Contract and its attachments;
5. That upon default hereunder or under the Note or the contract, subject to all applicable notice and cure periods, City shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Project Property described herein and operate same and collect the rents, profits and income there from;
6. That Contractor/Trustor will keep the Project Property including any improvements now existing or hereafter erected insured against loss by fire and such other hazards, casualties and contingencies as may be required in writing from time to time by City, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than one hundred percent (100%) of the insurable value or not less than the unpaid balance of the Deed of Trust, whichever is more. (For purposes of this Deed of Trust insurable value shall mean the total replacement cost of the Project Property, including improvements.) Such policies shall be endorsed with standard mortgage clause with loss payable to City and certificates thereof together with copies of original policies shall be deposited with City;
7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Project Property when due, all encumbrances, charges and liens, with interest, on said Project Property or any part thereof which appear to be prior or superior hereto, all costs, fees and expenses of this Trust;
8. To keep said Project Property in good condition and repair, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner

any building which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore (unless contested in good faith if Contractor/Trustor provides security satisfactory to City that any amounts found to be due will be paid and no sale of the Project property or other impairment of the security hereunder will occur); to comply with all laws affecting said Project Property or requiring any alterations or improvements to be made thereon; not to commit or permit water thereof; not to commit, suffer or permit any act upon said Project Property in violation of law and/or covenants, conditions and /or restrictions affecting said Project Property; not to permit or suffer any alteration of or addition to the buildings or improvements in or upon said Project Property without the written consent of City;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of City, and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which City may appear;
10. Should Contractor/Trustor fail to make any payment or do any act as herein provided, then City, but without obligation so to do and without notice to or demand upon Contractor/Trustor and without releasing Contractor/Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. City being authorized to enter upon said Project Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Costs of such actions by City shall be added to the principal sum included hereby;
11. City shall have the right to pay fire and other property insurance premiums when due should Contractor/Trustor fail to make any required premium payments. All such payments made by City shall be added to the principal sum secured hereby;
12. To pay immediately and without demand all sums so expended by City, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Note;
13. That the City Loan advanced hereunder is to be used for rehabilitation of Project Property in accordance with the Contract; and upon the failure of Contractor/Trustor to keep and perform all the covenants, conditions and restrictions of said Contract, the principal sum and all interest and other charges provided for in the Note shall at the option of City become due and payable, anything contained herein to the contrary notwithstanding, subject to all applicable notice and cure periods;
14. Contractor/Trustor further covenants that it will not voluntarily create, suffer or permit to be created against the Project Property, subject to the Deed of Trust, any lien or liens except as authorized by City and Further that it will keep and maintain the Project Property

free from the claims of all persons supplying labor or materials which will enter into the rehabilitation and repair of any and all buildings on the Project Property;

15. That any and all improvements made or about to be made upon the Project Property, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;
16. Contractor/Trustor herein agrees to pay to City or to the authorized loan servicing representative of City a charge not to exceed \$15.00 for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2, Title 14, Division 3 of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. If the construction of any improvements as herein referred to are not carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lockouts, City, after due notice to Contractor/Trustor or any subsequent owner, is hereby invested with full and complete authority to enter upon the Project Property, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the rehabilitation and repair of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Contractor/Trustor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by City (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand with interest at the rate specified in the Note;
18. Should the property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including reasonable attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, shall be applied to the amount due under the Note secured hereby. No amount

applied to the reduction of the principal shall relieve the Trustor from making payments as required by the Note.

19. Upon default by Contractor/Trustor in making any payments provided for herein or upon default by Contractor/Trustor in making any payment required in the Note secured hereby, or if Contractor/Trustor shall fail to perform any covenant or agreement in this Deed of Trust within 30 days after written demand therefor by City (or, in the event that more than 30 days is reasonably required to cure such default, should Contractor/Trustor fail to promptly commence such cure, and diligently prosecute same to completion), after the giving of notice and the expiration of any applicable cure period, City may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and City may foreclose this Deed of Trust. City shall also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.
20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Contractor/Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Contractor/Contractor/Trustor, Trustee or City, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of:
 - a. the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale;
 - b. the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed;
 - c. all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note;
 - d. all other sums then secured hereby; and
 - e. the remainder, if any, to the person or persons legally entitled thereto.
21. City may from time to time substitute a successor or successors to any Trustee named herein

or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by City, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.
23. Upon written request of City stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
24. The trust created hereby is irrevocable by Contractor/Trustor.
25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "City" shall include not only the original City hereunder but also any future owner and holder including pledgees, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Contractor/Trustor hereunder are joint and several.
26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Contractor/Trustor, City, or Trustee shall be a party unless brought by Trustee.
27. The undersigned Contractor/Trustor requests that copies of any notice of default and of any notice of sale hereunder be mailed to it at 465 South Street, San Jose, California 95113.
28. Contractor/Trustor agrees at any time and from time to time upon receipt of a written request from City, to furnish to City detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by City.

29. Transfer of Property by Contractor/Trustor. In order to induce City to make the loan secured hereby Contractor/Trustor agrees that in the event of any transfer of the Property without the prior written consent of City, City shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. City may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Deed of Trust, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Contractor/Trustor or any maker or guarantor of the Note from any liability thereunder without the prior written consent of City. As used herein, "transfer" includes the sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Project Property, or the lease of all or substantially all of the Project Property. "Transfer" shall also include the transfer, assignment hypothecation or conveyance of legal or beneficiary ownership of any interest in Contractor/Trustor or any conversion of Contractor/Trustor to an entity form other than that of Contractor/Trustor at the time of execution of the Contract. "Transfer" shall not include the leasing of individual residential units, or other rentable area on the Project Property, so long as Contractor/Trustor complies with the provisions of the Agreement relating to such leasing activity. In the event of any refinancing or partial refinancing (including any additional financing), without the prior written consent of beneficiary (which consent City may grant or deny in its sole discretion), then the entire outstanding balance of the Note together with all accrued and unpaid interest, shall be repaid to the City at the time of each refinancing or partial refinancing. In no event shall the total loan-to-value ratio for any and all refinancing exceed ninety percent (90%), nor shall the City's proportion of the total encumbrances increase as a result of any refinancing or partial refinancing.
30. Contractor/Trustor shall permit City and its agents or representatives, to inspect the Project Property at any and all reasonable times, with or without advance notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the property.
31. The Note provided for herein shall be subject to the restrictions set forth in the Contract and Contractor/Trustor hereby consents to such restrictions and agrees to be bound thereby. Such restrictions shall be in addition to and not in limitation of the rights of City expressly set for the in this Deed of Trust.
32. The Note provided for herein shall be subject to the restrictions set forth in the Contract and Contractor/Trustor hereby consents to such restrictions and agrees to be bound thereby. Such restrictions shall be in addition to and not in limitation of the rights of City expressly set forth in this Deed of Trust.
33. This Deed of Trust shall not be subordinated to any other interest in the Project Property without the prior written consent of the City.

34. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) And those substances defined as hazardous waster in 25117 of the California Health and Safety Code or as hazardous substances in 25316 of the California Health and Safety code or in any regulations promulgated under either such law, any so-called "Superfund" or "Super lien" law, or any other federal, state or local statue, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.
35. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Contractor/Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:
- a. Neither Contractor/Trustor nor, to the best knowledge of Contractor/Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Project Property or any part thereof, and neither the Project Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Contractor/Trustor or, to the best knowledge of the Contractor/Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials.
 - b. Contractor/Trustor hereby agrees to indemnify City, its officers, employees, contractors and agents, and hold City, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against City, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of the presence or use generation storage, release, threatened release or disposal of Hazardous Materials on or under the Project Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Project Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Super lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials). Regardless or whether or not caused by, or within the control of Contractor/Trustor.
 - c. Contractor/Trustor has not received any Notice of:

- (1) The happening of any event involving the use, spillage, discharge or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Contractor/Trustor or the Project Property; or
 - (2) Any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Contractor/Trustor or the Project Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Contractor/ Trustor receives any such notice after the date hereof, then Contractor/Trustor will give, within seven (7) business days thereafter, oral and written notice of same to City.
- d. Without limitation of City's rights under this Deed of Trust, City shall have the right, but not the obligation, to enter onto the Project Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or any Environmental Complaint on or pertaining to the Project Property which, if true, could result in an order, suit or other action against Contractor/Trustor affecting any part of the Project Property by any governmental agency or otherwise, which, in the sole opinion of City, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by City in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Contractor/Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the note secured hereby.
- e. The foregoing representation, covenants, indemnities and warranties shall be continuing and shall be true and correct from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.
36. A material violation of the terms, conditions or covenants of the Contract, Note, or this Deed of Trust, subject to applicable notice and cure periods, shall be an Event of Default (provided, however, that a material violation of the terms, conditions or covenants of the Contract or Note shall only be an Event of Default under this Deed of Trust if such violation occurs before the issuance of a Certificate of Completion by city).
37. Upon the occurrence of an Event of Default as described in Section 35, Contractor/Trustor shall be obligated to repay the Note and City may, by action, suit or proceeding at law or in equity, sue for, and enforce payment of any and all amounts due by Contractor/Trustor pursuant to the terms of the Note and/or sue to enforce the performance of the obligations of Contractor/Trustor under the Contract, subject to the terms and conditions of said agreement.

38. The Note secured by this Deed of Trust evidences a non-recourse only obligation of Contractor/Trustor.
39. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose, or the exercise of any other remedy provided by this Deed of Trust, including the curing of any Event of Default, shall be the responsibility Contractor/Trustor.
40. Each successor owner of an interest in the Project Property other than through foreclosure or deed in lieu of foreclosure, shall take its interest subject to this Deed of Trust.

**CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA
COUNTY**

A California Non-Profit corporation

By: _____

Name: _____

Title: _____


Date: _____

Local Address:
465 South First Street
San Jose, CA 95113
Telephone: (408) 282-1133
FAX: (408) 282-1140

38. The Note secured by this Deed of Trust evidences a non-recourse only obligation of Contractor/Trustor.
39. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose, or the exercise of any other remedy provided by this Deed of Trust, including the curing of any Event of Default, shall be the responsibility Contractor/Trustor.
40. Each successor owner of an interest in the Project Property other than through foreclosure or deed in lieu of foreclosure, shall take its interest subject to this Deed of Trust.

**CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA
COUNTY**

A California Non-Profit corporation

By: 

Name: Christopher Block

Title: Executive Director

Date: _____

Local Address:
465 South First Street
San Jose, CA 95113
Telephone: (408) 282-1133
FAX: (408) 282-1140

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara }

On 7/29/08

Date

before me,

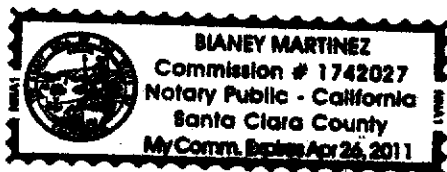
Bianey Martinez, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Christopher Block

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signature~~s~~ on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Place Notary Seal Above

Signature

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here